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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

RECEIVED

STATE OF TENNESSEE,

MAR 21 2006

Plaintiff,

DAV. CO. CHANCERY COURT

v.

No.

F02  
06-702-I  
costs pd.

AMERIQUEST MORTGAGE COMPANY, a Delaware)  
corporation; ACC CAPITAL HOLDINGS )  
CORPORATION, a Delaware corporation; a )  
Delaware corporation; and AMC MORTGAGE )  
SERVICES, INC., formerly known as Bedford Home )  
Loans, a Delaware corporation, )

Defendants. )

FILED  
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CLERK & MASTER  
DAVIDSON CO. CHANCERY COURT  
NASH

AGREED FINAL JUDGMENT

Plaintiff, the State of Tennessee, by and through Paul G. Summers, the Attorney General ("Attorney General"), at the request of Greg Gonzales, the Acting Commissioner of the Department of Financial Institutions ("DFI"), and Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division"), and Defendants ACC Capital Holdings Corporation ("ACCCH"), and its subsidiaries Amerquest Mortgage Company ("AMQ"), and AMC Mortgage Services, Inc., formerly known as Bedford Home Loans (hereafter "AMC"), on behalf of themselves and their successors, assigns, predecessors, and any future acquired or created corporations or other business entities of ACCCH, AMQ, or AMC, including Town & Country Credit Corporation ("TCCC"), engaged in the Retail Based origination and funding of real estate secured, owner-occupied, residential mortgage loans, have resolved the matters in controversy between them and have consented to the terms of this

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judgment, and good cause having been shown, the Court hereby enters this Agreed Final Judgment ("Judgment").

### **I. DEFINITIONS**

For purposes of this Agreed Final Judgment, the following Definitions apply (capitalized terms used in a definition are themselves defined below):

A. "Adjustable Rate Mortgage" means a Loan that has "a variable rate feature" as used in 12 C.F.R. § 226.18(f).

B. "Ameriquest Party(ies)" means, as the context requires, any ACCCH subsidiary, including those acquired or formed in the future, involved in the Retail Based origination and funding of real estate secured, owner-occupied, residential mortgage loans, and also including its current Retail Based real estate lending subsidiaries AMQ, AMC and TCCC, and the respective successors and assigns and all the respective employees, officers and directors (solely in their respective official capacities during the term of their employment or directorship and not in their individual capacities) of these subsidiaries. This term does not include ACCCH or any subsidiaries that are not involved in the Retail Based origination and funding of real estate secured, owner-occupied, residential mortgage loans.

C. "Annual Percentage Rate" and "APR" mean the measure of the cost of credit expressed as a yearly rate, calculated according to the provisions of TILA.

D. "Appraisal" means a written or electronic analysis by an appraiser licensed or certified under the laws or regulations of Tennessee or any political subdivision of Tennessee to conduct Appraisals of the value or worth of a single-family or 1-4 unit residential property proposed to serve as collateral for a Loan. The term does not include reports that estimate the value of residential property by means of an Automated Valuation Model or AVM.

E. "Appraisal Department" means that department of an Ameriquest Party housing employees with responsibility for ordering and reviewing appraisals, which is located at the regional or headquarters office of the Ameriquest Party. It includes members of the Appraisal and Business Control Groups but does not include any employees who are Sales Personnel.

F. "Borrower" means an individual who has consummated a Loan with an Ameriquest Party.

G. "Closing" means the process during which a Borrower executes a note and security instrument regarding a lien on real property in connection with a Loan. In some Settling States a Closing is referred to as a "settlement" and in others as an "escrow."

H. "Covered Transactions" means any Loans originated by any Ameriquest Party during the period January 1, 1999 through and including December 31, 2005.

I. "Debt Collector" means a person or entity who is a debt collector as that term is defined at 15 U.S.C. § 1692a (6).

J. "Discount Points" means fees or charges paid by the Borrower to an Ameriquest Party at the time of origination of a Loan for the purpose of reducing the interest rate applicable to the Loan.

K. "District Attorneys" means the District Attorneys of Alameda, Los Angeles, Merced, Monterey, San Francisco and San Mateo Counties, California.

L. "Effective Date" means March 21, 2006.

M. "Financial Regulator" means the administrative agency or agencies within any Settling State, which at any time between January 1, 1999 through and including December 31, 2005, exercised regulatory, licensing, examination, supervisory or other administrative

enforcement authority over the Ameriquest Parties with respect to any of the Covered Transactions.

N. "Fixed Rate Mortgage" means a Loan that is not an Adjustable Rate Mortgage.

O. "Good Faith Estimate" and "GFE" mean an estimate of charges, prepared in accordance with section 5 of RESPA, which a Borrower is likely to incur in connection with the Closing of a proposed Loan.

P. "Independent Loan Closer" means any person who is not an employee of the branch office where the Loan is originated, a spouse, parent, sibling, or child of a branch office employee, or a spouse of any such person, who has no financial interest in the Loan being closed other than payment of standard settlement fees and charges, and who is present at the time of Closing for the purpose of procuring the Borrower's execution of documents related to the Closing process.

Q. "Lending Practices" means any representations, misrepresentations, omissions, disclosures or any other acts, events, facts, transactions, occurrences, or conduct, whether oral, written or otherwise, by an Ameriquest Party, including its employees or agents, arising out of, in connection with, or relating to any of the following:

1. Loan types and terms, including Discount Points, interest rates, origination-related fees, monthly payment amounts, terms of Adjustable Rate and Fixed Rate Mortgages and Prepayment Penalties;
2. Written disclosures, including the GFE and other documents required to be provided to a Potential Borrower by any law or otherwise, provided by an Ameriquest Party;

3. The Borrower benefits of obtaining a Loan from an Ameriquest Party or from a repeat Refinancing with an Ameriquest Party;

4. Coordination with Debt Collectors;

5. The timely completion of the Underwriting functions and funding of a Loan;

6. Closing of a Loan;

7. Appraisals;

8. Stated Income Loans;

9. Disclosures to non-English speaking Borrowers and Potential Borrowers, including but not limited to, any of the claims set forth in the Complaint in this action.

R. "Loan" means a Retail Based, real estate secured, owner-occupied, residential mortgage loan originated and funded by an Ameriquest Party.

S. "Material Change in Terms" means:

1. An increase in the interest rate of the Loan of thirty (30) basis points or more or any increase in Discount Points, other than as the result of trading Discount Points for interest rate at the affirmative request of the Borrower;

2. Any increase in the repayment term of the Loan;

3. A decrease in the Loan amount greater than one percent (1%);

4. The addition of a Prepayment Penalty; or

5. The change from a Fixed Rate Mortgage to an Adjustable Rate Mortgage.

T. "Non-Prime Loan" means a Loan for which the APR is equal to or greater than two and one-half percentage points (2.5%) for first-lien loans or five percentage points (5%) for

subordinate-lien loans above the Treasury yield for securities of a comparable period of maturity as of the fifteenth day of the month in which the interest rate on the Loan is set. Following receipt of the first Monitor's Report, due on March 31, 2007, and again upon receipt of the second Monitor's Report, due on March 31, 2008, the Compliance Committee shall renegotiate this provision in good faith with ACCCH and the Amerquest Parties, taking into account the Amerquest Parties' record of compliance reflected in the Monitor's Reports and any other relevant information.

U. "Potential Borrower" means an individual who is seeking or receiving information about a Loan from an Amerquest Party Sales Person; provided, however, that Potential Borrower does not include an individual who receives, but does not respond to, marketing materials or information, including advertisements.

V. "Prepayment Penalty" means a fee assessed, pursuant to the terms of the Loan documents, when a Borrower pays off a Loan within a designated period of time after Closing, but excluding any fee or charge that may be assessed to facilitate Loan pay-off, such as a pay-off fee, fax fee, reconveyance fee or other fee that is not prohibited under applicable law and would be payable for the pay-off of any Loan without regard to whether the Loan documents impose what generally is understood to be a Prepayment Penalty.

W. "Refinance" means to satisfy one Loan with the proceeds from a new Loan obtained by the same Borrower(s), using the same property as security. A Refinance does not include the matters identified in 12 C.F.R. § 226.20(a)(1)-(5).

X. "RESPA" means the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq., and Regulation X, promulgated pursuant thereto, 24 C.F.R. Part 3500, including subsequent amendments.

Y. "Retail Based" means loans originated and funded by employees or independent contractors acting in the name and on behalf of the lender directly to consumers. It does not include other methods of originating loans using third parties, such as mortgage brokers or loan correspondents.

Z. "Sales Person" or "Sales Personnel" means any employee or employees who work in the AMC Portfolio Retention Department, at a branch office of any Ameriquest Party or who otherwise may reasonably be foreseen to have direct communications (whether in person, telephonically, or by electronic means) with Potential Borrowers for the purpose of originating a Loan and those who supervise those employees, including regional and area managers.

AA. "Settlement Fund" means the amounts required to be paid under this Judgment for consumer restitution and settlement administration.

BB. "Settling States" means the States or Commonwealths, including the District of Columbia, that file in the appropriate state courts, fully executed Consent Judgments or Stipulated Judgments (or comparable pleadings) resolving with ACCCH and the Ameriquest Parties the matters set forth herein.

CC. "State Attorneys General" means the chief legal officer of each state, commonwealth and the District of Columbia, except for the states of Hawaii and Georgia. For Hawaii, it means the Executive Director of the Hawaii Office of Consumer Protection, an agency with statutory authority to represent the State of Hawaii in Consumer Protection Actions. For Georgia, it means the Administrator of the Fair Business Practices Act, who is authorized by statute to enter into settlement agreements on behalf of the State of Georgia.

DD. "Stated Income Loan" means a Loan where a Borrower is not required to provide verification or documentation to support all income listed on the Borrower's application.

EE. "TILA" means the federal Truth-in-Lending Act, 15 U.S.C. §1601 et seq., and Regulation Z, promulgated pursuant thereto, 12 C.F.R. Part 226, including subsequent amendments.

FF. "Underwriting" means the process of approving or denying a Loan based on an evaluation of the applicant's creditworthiness and ability to repay the Loan and an Appraisal of the market value of the residential property proposed to secure the Loan.

## **II. STIPULATED RECITALS**

A. This Court has jurisdiction of the subject matter hereof and the parties hereto.

B. This Agreed Final Judgment may be entered by a chancellor of the Davidson County Chancery Court. Pursuant to Tenn. Code Ann. §47-18-108(a)(3), venue as to all matters between the parties arising out of this Agreed Final Judgment is solely in the Chancery Court of Davidson County, Tennessee.

C. Plaintiff, as well as the State Attorneys General and state financial regulators in other states and the District Attorneys, has received and investigated consumer complaints, and conducted examinations with respect to the Lending Practices of the Ameriquist Parties and acknowledges that ACCCH and the Ameriquist Parties cooperated with Plaintiff and the other Settling States' investigations and examinations of the Lending Practices as defined in this Judgment. In the interest of resolving the issues raised by the complaints, investigations and examinations and to avoid the risks, loss of time and the cost associated with protracted litigation, the parties have voluntarily entered into this Judgment.

D. ACCCH and the Ameriquist Parties deny all the allegations raised by the Settling States. This Agreed Final Judgment shall not be interpreted as an admission of wrongdoing by ACCCH or the Ameriquist Parties or as an admission, concession, or evidence of any alleged



fault, misrepresentation, act or omission or any other alleged violation of law, and it does not represent a formal finding of wrongdoing by any court or administrative agency.

E. Plaintiff and Defendants hereby waive their right to move for a new trial or otherwise seek to set aside the Judgment through any collateral attack, and further waive their right to appeal from the Judgment, except that Plaintiff and Defendants, and each of them, agree that this Court shall retain jurisdiction for the purposes specified in paragraph VIII(H) of this Judgment.

F. Defendants submit to the jurisdiction of the Davidson County Chancery Court solely for the purposes of entry of this judgment, and for any action by Plaintiff or by any of the Defendants hereto regarding the construction, carrying out, modification, enforcement, or punishment for any violation of any provision of the Judgment.

G. Defendants will accept notice of entry of judgment entered in this action by delivery of such notice to their counsel of record, and agree that service of the notice of entry of judgment will be deemed personal service upon them for all purposes.

### **III. PAYMENT OF RESTITUTION, ATTORNEYS' FEES, INVESTIGATION COSTS AND OTHER EXPENSES TO THE STATES.**

A. **Payment Obligation of ACCCH.** ACCCH is a party to this Agreed Final Judgment for the sole purpose of paying restitution and other amounts as set forth below in this Section III and in Sections V.C.3 and VI.E.

B. **Payment of Restitution.** ACCCH or AMQ shall pay the sum of Two Hundred Ninety-Five Million Dollars (\$295,000,000) for the payment of restitution to Borrowers in the Settling States nationally. The restitution awarded under the terms of this Judgment is not and

shall not be considered as forgiven debt. The Settlement Fund shall be divided into two sub-funds:

1. The sum of One Hundred Seventy-Five Million Dollars (\$175,000,000) shall be used to provide restitution to Borrowers who obtained Loans from an Ameriquest Party during the period of January 1, 1999 to April 1, 2003 ("Sub-Fund A"). Sub-Fund A, plus any net, post-tax interest earned on that sum, shall be distributed on a nationwide basis by the Settlement Administrator to certain Borrowers, including certain Borrowers in Tennessee, who received a Loan from any of the Ameriquest Parties from January 1, 1999, through and including April 1, 2003, according to a formula to be established by the Settling States.
2. The sum of One Hundred Twenty Million Dollars (\$120,000,000) shall be used to provide restitution to Borrowers who obtained Loans from an Ameriquest Party between January 1, 1999 and December 31, 2005 ("Sub-Fund B"). The State of Tennessee's share of Sub-Fund B shall be One Million One Hundred Forty-Nine Thousand Two Hundred Thirty-Four Dollars and Forty-Eight Cents (\$1,149,234.48) plus any net, post-tax interest earned on that sum. The State of Tennessee shall have sole discretion to determine the manner in which it will distribute its share of Sub-Fund B to consumers, including criteria for choosing which Borrowers shall receive any restitution and the amount to distribute to each.

C. Payment to the Settling States. Within three (3) business days after the Effective Date, ACCCH or AMQ shall pay, by wire transfer or as otherwise directed, the sum of Thirty Million Dollars (\$30,000,000) to the Settling States for their attorneys' fees, investigation

costs, and other expenses related to the investigation and resolution of this matter. The State of Tennessee's share of these costs shall be Three Hundred Ten Thousand Dollars (\$310,000). ACCCH or AMQ shall distribute the funds being paid to Tennessee pursuant to this subparagraph as follows: One Hundred Fifty-Five Thousand Dollars (\$155,000) shall be paid to the Office of the Tennessee Attorney General and One Hundred Fifty-Five Thousand Dollars (\$155,000) shall be paid to the Tennessee Department of Financial Institutions. The State of Tennessee may use all or part of this sum to fund consumer fraud education, investigation, enforcement operations, litigation, public protection or local consumer aid, including contributions to develop a national mortgage licensing system. The State of Tennessee further retains the right to use any portion of its share for consumer restitution.

D. **Payment Schedule.** All payments to the Settlement Fund shall be by wire transfer to the Settlement Administrator and deposited by the Administrator into an interest bearing account. In the event the Settlement Administrator is not in place at the time any payment is due, ACCCH or AMQ shall make the payment into an escrow account established for that purpose by the Compliance Committee with a trustee to be named by the Settling States, who shall deposit the payment with the Settlement Administrator as soon as one is in place. ACCCH or AMQ shall make the required payments according to the following schedule:

1. The sum of Forty-five Million Dollars (\$45,000,000) shall be paid no later than three (3) business days after the Effective Date.
2. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later than ninety (90) days after the date the first payment is due.
3. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later than one hundred eighty (180) days after the date the first payment is due.

4. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later than two hundred seventy (270) days after the date the first payment is due.

5. The sum of Seventy Million Dollars (\$70,000,000) shall be paid not later than three hundred sixty five (365) days after the date the first payment is due.

E. **Funds to Be Held in Trust.** All monies in the Settlement Fund, including interest income, shall be held in trust for the purposes stated in this Judgment. Neither ACCCH nor the Ameriquist Parties shall have any property right, interest, claim or title to the Settlement Fund or any interest earned thereon once a deposit is made into the Settlement Fund.

F. **Qualified Settlement Fund.** The fund established by this Judgment for the payment of restitution is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as amended.

#### **IV. INJUNCTIVE RELIEF**

Pursuant to Tenn. Code Ann. § 47-18-108, the Ameriquist Parties are enjoined with respect to their origination and funding of Loans from engaging in unfair or deceptive acts or practices and are further enjoined as follows:

A. **Scope.** The injunctive requirements set forth below are intended as a floor or minimum requirements governing the conduct of the Ameriquist Parties. Nothing set forth herein alters the requirements of Tennessee or federal law to the extent those laws offer greater protection to consumers.

B. **Disclosure of Loan Terms.** The Ameriquist Parties shall not make false, misleading or deceptive representations regarding Loan terms and shall make the following disclosures to Potential Borrowers in a clear manner:

1. **Oral Disclosures.** Amerquest Parties' Sales Personnel, whenever they have obtained Non-Prime Loan pricing information from their respective pricing model based on credit information provided by a Potential Borrower and that Potential Borrower has in a conversation with an Amerquest Party Sales Person agreed to the submission of a specific Non-Prime Loan proposal for processing (but in no event later than when an appraisal or loan documents have been ordered, whichever occurs first), shall provide oral disclosures as follows:

- a. ***Fixed Rate Mortgage - Specific Loan Terms.*** If the proposed Non-Prime Loan is a Fixed Rate Mortgage, the Amerquest Parties' Sales Personnel shall provide an oral disclosure in substantially the following form:

"The loan we have been discussing is a [insert term of the loan] year fixed rate loan for \$ [insert loan amount]. The interest rate is [insert interest rate]%. The monthly payment is \$[insert monthly payment], which does [or does not] include escrows for property taxes or insurance. Your loan does [or does not] include a prepayment penalty."

- b. ***Fixed Rate Mortgage - With Discount Points.*** If the proposed Non-Prime Loan includes a fixed rate mortgage and provides for the payment of Discount Points, Amerquest Parties' Sales Personnel shall provide an oral disclosure in substantially the following form:

"This loan includes payment of [insert number] discount points, a fee you pay at closing that reduces the interest rate on your loan and also the amount of your monthly payment but increases the total amount of your loan. You may be eligible for a loan with fewer discount points."

- c. *Adjustable Rate Mortgage - Specific Loan Terms.* If the proposed Non-Prime Loan includes an Adjustable Rate Mortgage, Ameriquest Parties' Sales Personnel shall provide an oral disclosure in substantially the following form:

"The loan we have been discussing is an adjustable rate loan for \$[insert loan amount], with an initial interest rate of [insert initial interest rate]%. Your initial monthly payment would be \$[insert initial monthly payment], which does [or does not] include escrows for property taxes or insurance. Your loan does [or does not] include a prepayment penalty.

"Because this is an adjustable rate loan, the initial interest rate and monthly payment I quoted you are only guaranteed for the first [insert length of initial fixed rate period] of the loan. After that, your interest rate can increase by up to [insert rate adjustment cap] percent each year. But, your interest rate can never be higher than [insert lifetime cap] percentage points over your initial interest rate."

If the Sales Person has not previously discussed a specific Fixed Rate Mortgage proposal with the Potential Borrower, the Sales Person shall also provide an additional oral statement in substantially the following form:

"You may be eligible for a loan with an interest rate that does not change."

- d. *Adjustable Rate Mortgage - With Discount Points.* If the proposed Non-Prime Loan includes an Adjustable Rate Mortgage and the payment

of Discount Points, Ameriquest Sales Personnel shall provide an oral disclosure in substantially the following form:

"This loan includes a payment of [insert the number] discount points, a \$[insert the amount of the discount points in dollars] fee you will pay at closing to lower your initial interest rate and monthly payment. You may be eligible to pay fewer discount points, but if you do that your initial interest rate and monthly payment will be higher."

- e. **Prepayment Penalty.** If the proposed Non-Prime Loan includes a Prepayment Penalty, Ameriquest Sales Personnel shall make an oral disclosure in substantially the following form:

"This loan contains a prepayment penalty. That means if you pay off or refinance your loan within [insert the length of the period] you will pay a fee of as much as \$[insert the amount of the fee in dollars]. You may be eligible for a loan without a prepayment penalty, but you would then pay a higher interest rate and a higher monthly payment."

- f. **Concluding Statement.** The Ameriquest Parties' Sales Personnel shall conclude the conversation with the Potential Borrower by making a statement in substantially the following form:

"We will be sending you some written disclosures that explain your options regarding a fixed versus adjustable rate loan, paying more or less discount points and a loan with or without a prepayment penalty. If, after reading the information we send you, you wish to make any changes to this loan proposal, please give me a call."

- g. ***Interest Rate Disclosure.*** The Ameriquist Parties shall disclose the interest rate being offered, if known, whenever asked by a Potential Borrower.
  - h. ***Written or Electronic Disclosures.*** The Ameriquist Parties' Sales Personnel shall be instructed that in the event a Potential Borrower's application is not submitted orally but in a written or electronic document (or submitted through a website or other electronic format), the foregoing oral disclosures, as and if applicable, shall be provided within three (3) days of receipt of the application, in writing by mail or by transmission by the same means used in submitting the application.
  - i. ***Failure to Make Oral Disclosures.*** If an Ameriquist Party discovers that a Sales Person has failed to make required oral disclosures to the Potential Borrower, that Ameriquist Party shall take prompt and appropriate disciplinary action, up to and including dismissal of the responsible personnel.
2. ***Written Disclosures.*** Within three (3) days after obtaining Loan pricing information from their respective pricing model based on credit information provided by a Potential Borrower and the Potential Borrower agreeing to the submission of a specific Loan proposal for processing (but in no event later than three (3) days after when an appraisal or loan documents have been ordered, whichever occurs first) and without regard to any other disclosure requirements, the Ameriquist Parties shall provide the Potential Borrower a single page disclosure, in writing or electronically, which discloses the terms of the specific



Loan proposal being offered to the Potential Borrower, in substantially the form as attached hereto as Exhibit A (hereafter "Disclosure Form"). The initial Disclosure Form may be included with other required disclosures being sent to Potential Borrowers at the same time.

- a. If any one or more Material Changes in Terms occurs, subsequently making the initial Disclosure Form inaccurate, the Amerquest Parties shall mail, not less than six (6) days before Closing, or deliver or cause to be delivered by courier, facsimile transmission, e-mail or website access so as to be received or accessed by the Potential Borrower at least three (3) days prior to Closing for a Non-Prime Refinance Loan and as soon as reasonably possible but in no event less than one (1) day prior to Closing for any other Loan, a revised Disclosure Form that reflects the Loan terms that will be presented to the Potential Borrower at Closing, including all Material Changes in Terms.
- b. Notwithstanding the provisions of Section IV.B.2.a. above, an Amerquest Party need not provide the Potential Borrower a revised Disclosure Form when the only Material Change in Terms is an increase in Discount Points of no more than forty-seven (47) basis points and that increase has been requested by the Potential Borrower to buy down an increase in the interest rate that would not by itself represent a Material Change in Terms.
- c. If the revised Disclosure Form is mailed or delivered by courier or facsimile transmission, it must be accompanied by a cover letter advising the Potential Borrower that changes have been made to the terms of the

proposed Loan. If the revised Disclosure Form is delivered by e-mail message, the subject line must contain the following: "IMPORTANT CHANGES to your [THE APPLICABLE AMERIQUEST PARTY] loan proposal." If the revised Disclosure Form is delivered by website access, access to the website must be password protected.

d. Compliance with the time provisions of this subparagraph may be proven by satisfactory proof of one of the following:

- (1) Timely mailing;
- (2) Timely dispatch by courier or facsimile transmission;
- (3) Confirmation of timely receipt of the e-mail by the Potential Borrower; or
- (4) Confirmation of timely access to the web site by the Potential Borrower.

e. The Ameriquest Parties shall instruct the Independent Loan Closer that the final Disclosure Form must be the first document presented to the Potential Borrower at Closing by the Independent Loan Closer, who shall review it with, and have it signed by, the Borrower. In the event an Ameriquest Party employee is conducting the Closing, when permitted under this Judgment, the final Disclosure Form shall be the first document presented to the Potential Borrower at Closing, who shall review it with, and have it signed by, the Borrower.

3. In communicating with Potential Borrowers, the Ameriquest Parties shall not represent that their respective interest rate or terms are "better," "lower" than, or

"competitive" with those of other mortgage lenders, or use words of similar import, unless such representations are in fact true.

4. The Amerquest Parties shall not misrepresent the adjustable rate feature of any Adjustable Rate Mortgage. For example, the Amerquest Parties may not:
  - a. State or imply that the interest rate on the Loan will not, or is unlikely to, adjust in the future;
  - b. State or imply that the interest rate on the Loan can go down (from its initial rate) as well as up, unless that is in fact true;
  - c. State or imply that the initial "fixed" interest rate in an Adjustable Rate Mortgage is the interest rate for the entire term of the Loan;
  - d. State or imply that the interest rate will go up only if the market rates increase, unless that is, in fact, true.
5. When comparing different Loans, the Amerquest Parties shall not state or imply that monthly Loan payments, which include amounts escrowed for payment of property taxes and homeowner's insurance, are comparable with monthly Loan payments that do not include these amounts. The Amerquest Parties shall inform a Potential Borrower whether the monthly payment discussed with or proposed to the Potential Borrower does or does not include any amount escrowed for taxes or insurance, as the case may be.
6. No Amerquest Party shall represent to a Potential Borrower that it will be able to Refinance the Potential Borrower's proposed Loan at a later date on more favorable terms unless the Loan proposal being made to the Potential Borrower

provides that the Ameriquest Party is contractually bound to Refinance the Potential Borrower's proposed Loan at the later date on more favorable terms.

7. The Ameriquest Parties shall not misrepresent to any Borrower or Potential Borrower the credit rating or credit status of that Borrower or Potential Borrower.

C. **Same Rate Available.** The Ameriquest Parties shall make Loans in accordance with a pricing model that is designed to produce (before the use of any price exception) the same interest rate and number of Discount Points for all Potential Borrowers with the same credit risk characteristics, who are applying for the same Loan, and who are the same with respect to any other characteristic(s) or fact(s) that affect the pricing information generated by the pricing model. Nothing herein shall prohibit an Ameriquest Party from making individual "price exceptions" wherein the Ameriquest Party offers a Potential Borrower a rate that is lower than the rate for which the Potential Borrower otherwise qualifies ("Price Exception"). Provided, however, if in any ninety (90) day period the number of Borrowers receiving a Price Exception from an Ameriquest Party exceeds thirty percent (30%) of the Loans originated within the period, there shall be a rebuttable presumption that the Ameriquest Party has violated the provisions of this Section IV.C.

Price Exception does not include the following: (1) a price reduction given to prevent the Loan from becoming a high-cost or covered loan under the Home Ownership and Equity Protection Act (HOEPA), or any similar Tennessee law, or from violating any Tennessee law limitation on fees, rates, or other costs; (2) a price override given at or near the time of funding to honor a previous price commitment; or (3) a firm offer of credit to a pre-screened Potential Borrower that is required by the Fair Credit Reporting Act and based upon the pricing model

price at the time of the offer but that is not accepted by the Potential Borrower until after the pricing model price has increased.

D. **Good Faith Estimates (GFE).** The Amerquest Parties shall provide each Loan applicant with a GFE, as required by RESPA. The Amerquest Parties shall not disparage, discredit, or otherwise encourage Potential Borrowers to disregard the GFE. For example, the Amerquest Parties shall not represent to a Potential Borrower that the GFE is incorrect, reflects the worst case scenario, is not the true Loan proposal, or reflects terms that are higher or lower than the actual terms the Potential Borrower will receive.

E. **Borrower Benefit Assessment.** The Amerquest Parties shall not enter into any Non-Prime Refinance Loan that does not provide a benefit to the Borrower. The Amerquest Parties must document that each Non-Prime Refinance Loan provides a benefit and maintain such documentation in a readily retrievable format.

F. **Foreign Language Provisions.** The Amerquest Parties shall continue their current policy of: (a) maintaining a program of testing and certifying appropriate Sales Personnel for fluency in the Spanish language, and (b) translating into Spanish (i) all documents legally required to be translated, (ii) the Disclosure Form and (iii) any other disclosure documents voluntarily provided to Potential Borrowers under an Amerquest Party's Best Practices. If an Amerquest Party advertises in any language other than English or Spanish, it must adopt and implement a similar policy with respect to consumers who speak the other language.

G. **Prepayment Penalties.**

1. The Amerquest Parties shall reimburse a consumer for any Prepayment Penalty paid by that consumer if the existence of the penalty was not timely and fully disclosed. The Amerquest Parties shall be deemed to have complied with this

requirement of full and timely disclosure by the mailing or delivery of the Disclosure Form as provided in Paragraph IV.B.2 above.

2. For any Non-Prime Adjustable Rate Mortgage Loan originated one (1) year or later after the Effective Date that has a Prepayment Penalty, the term of the Prepayment Penalty may not exceed six months beyond the fixed rate term of the Loan. For a period of five (5) years after the Effective Date, the Amerquest Parties shall, with respect to such Loans, limit the interest rate adjustment during the Prepayment Penalty term to not more than two (2) percentage points.
3. The Amerquest Parties shall not make false, misleading or deceptive representations regarding a Prepayment Penalty provision. For example:
  - a. Whenever an Amerquest Party orally represents that a Potential Borrower can Refinance at a later date, that Amerquest Party must also simultaneously advise the Potential Borrower of any obligation to pay a Prepayment Penalty.
  - b. The Amerquest Parties shall not promise or represent to a Potential Borrower that the Amerquest Parties will waive a Prepayment Penalty at some future date, unless that promise is contemporaneously communicated in writing and is included as a term in the Loan made to the Potential Borrower.
  - c. The Amerquest Parties shall not refer to a Prepayment Penalty as a "Prepayment Privilege," a "Prepayment Benefit," a "Prepayment Opportunity," or use any similar term that tends to mislead a Potential Borrower regarding the obligation to pay a penalty.

d. The Amerquest Parties shall not state, infer or imply that the circumstances that would trigger a Prepayment Penalty may not or will not occur; provided, however, that the Amerquest Parties may inform a Potential Borrower of the facts regarding when a Prepayment Penalty included in a Loan proposal does and does not have to be paid according to its terms.

4. The Amerquest Parties shall continue their current practice of not providing their employees with any monetary incentive or other compensation for including a Prepayment Penalty provision in a Loan.

H. **Repeat Refinancings.**

1. No Amerquest Party may solicit Borrowers with existing Non-Prime Loans for Refinancing within twenty-four (24) months of the Loan Closing date unless it:

- a. Receives a request for a pay-off statement from the Borrower or by someone authorized by the Borrower;
- b. Is contacted by a Borrower who expressly inquires about Refinancing; or
- c. Otherwise has a good faith belief, supported by objective evidence, that the Borrower is considering Refinancing.

2. Any proposed Refinancing of a Borrower's Non-Prime Refinance Loan must provide a benefit pursuant to Section IV.E above.

3. No Amerquest Party employee may offer, give or receive compensation to or from a fellow employee, including employees of the Portfolio Retention Centers, in connection with Refinancing a Borrower within twenty-four (24) months of the Closing date of an existing Loan; provided, however, this restriction shall not

apply to payments made under an Ameriquest Party's then existing compensation policy.

I. **Independent Loan Closers.**

1. The Ameriquest Parties shall use an Independent Loan Closer for all of their Non-Prime Loan Closings.
2. Written Instructions and Whistleblower Agreement. The Ameriquest Parties shall provide each Independent Loan Closer with written instructions and procedures, which the Independent Loan Closer shall be required to follow at Closings. The Ameriquest Parties shall require the Independent Loan Closer to provide a written report both to designated Ameriquest Party senior management, and to the Monitor during the compliance monitoring period, if the Independent Loan Closer discovers unfair, deceptive, misleading or unlawful behavior by any Ameriquest Party employee in connection with any Loan. If an Ameriquest Party learns that an Independent Loan Closer failed to report such misconduct, the Ameriquest Party shall take disciplinary action against the Independent Loan Closer, including temporary or permanent removal from the list of approved Independent Loan Closers. The Ameriquest Parties may not retaliate against an Independent Loan Closer for reporting misconduct.
3. Independent Loan Closers shall be instructed by the Ameriquest Parties to explain fully the Closing process and Loan documents to Potential Borrowers and to answer all questions from Potential Borrowers to the best of the Independent Loan Closer's ability, unless the Independent Loan Closer is prohibited by law or professional standards from doing so. Further, Independent Loan Closers shall be



instructed not to pressure or rush Potential Borrowers at Closing or encourage them to close by suggesting Potential Borrowers may use the rescission period either to read Loan documents or to address questions or objections raised at Closing.

4. Employees of Amerquest Parties may attend Non-Prime Loan Closings only if requested by a Potential Borrower. Amerquest Party employees attending a Closing may not pressure or rush Potential Borrowers, encourage them to close by suggesting they may use the rescission period either to read Loan documents or to address questions or objections raised at Closing, or in any way obstruct the ability of the Independent Loan Closer to perform his or her duties. The Independent Loan Closer shall be required to report any violation of this Paragraph IV.I.4 by any Sales Personnel to designated persons in the appropriate regional or headquarters office of the applicable Amerquest Party. Persons designated may not be Sales Personnel.
5. Notwithstanding the foregoing, Amerquest employees may conduct and attend Closings of Loans that are not Non-Prime Loans.

J. Closings.

1. Before Closing a Loan, the Amerquest Parties shall ensure that (a) the Potential Borrower has satisfied all credit Underwriting requirements; (b) an Appraisal or AVM has been submitted and evaluated (if required); and, (c) standard title-related information has been received and reviewed.
2. The Amerquest Parties may Close a Loan subject to satisfaction of standard industry contingencies such as execution and receipt of state-specific documents

(e.g., New York and New Jersey same-name affidavits, Texas election not to rescind forms, receipt of pay stubs for proof of employment, credit report explanation letters, use of proceeds letters and hazard insurance loss payee endorsements).

3. If an Amerquest Party schedules a Closing before satisfying the requirements set forth above in Paragraph IV.J.1, it may not represent, suggest or imply to a Potential Borrower that a Loan has been or will be approved, unless and until these Closing requirements are met. If an Amerquest Party communicates with a Potential Borrower to schedule a Closing before the Closing requirements have been met, it must clearly inform the Potential Borrower that the Loan has not yet been approved, and that Closing is contingent upon resolution of all outstanding issues.

K. **Loan Funding.** The Amerquest Parties must fully and unconditionally disburse the proceeds of all Refinance Loans to the Borrower, settlement agent, or other creditors as reflected in the settlement statement on the first business day after the expiration of any rescission period provided for by law or internal Best Practices; provided, however, that the Amerquest Parties will not be deemed to have violated this requirement where: (1) Closing contingencies as set forth in Paragraph IV.J.2 have not been satisfied; (2) an Amerquest Party is prevented from fully disbursing the proceeds because the wire transfer is delayed (by no more than one (1) day) due to the volume of other scheduled Closings; or (3) by other causes beyond an Amerquest Party's reasonable control and occurring without its fault or negligence, including, Acts of God, floods, fires, government restrictions, wars, strikes and insurrections.

If an Amerquest Party fails, for reasons other than those described above, to timely disburse the Refinance Loan proceeds, it shall reimburse any resulting interest, late fees, or other charges incurred by the Borrower, and fully cooperate in assisting the Borrower in removing any adverse credit report information arising from the non-timely payment. Notwithstanding the foregoing, no Amerquest Party shall be required to disburse the proceeds of any Loan until it is reasonably satisfied the Borrower has not rescinded the Loan transaction.

L. **Appraisals.**

1. **Conducting Appraisals.** The Amerquest Parties shall take reasonable steps to ensure all Appraisals are accurate, that appraisers do not inflate property values and that no employee of an Amerquest Party attempts to influence the development, reporting, result or review of any Appraisal or otherwise interferes with an appraiser's professional duty to perform the Appraisal impartially, objectively and independently.
2. **Removal of Branch from Appraiser Selection.** The Amerquest Parties shall implement a system to ensure that Appraisals are ordered as part of an automated, centralized process apart from the branch sales offices. Sales Personnel may not select appraisers.

The Amerquest Parties shall inform all appraisers currently on their approved or accepted lists that they are no longer dependent upon the branch offices for Appraisal assignments, that only the Appraisal Department can remove them from a panel, and that they are to ignore, and report immediately to the Appraisal Department, any effort by any Sales Person, including any Mortgage

Specialist, Branch Manager, Area Sales Manager, or Regional Sales Manager to influence appraised value in any way.

Similarly, the Ameriquest Parties shall instruct Sales Personnel they are not to engage in any communications with any appraiser regarding the substantive content of the Appraisal report or the final appraised value, or to attempt to influence the results of the Appraisal in any way and, if they are found to have done so, they will be subject to immediate disciplinary action, up to and including dismissal.

3. **Automated Selection of Ranked Appraisers Required.** A panel of qualified, approved appraisers shall be created for each State. When a new Loan file is opened, the automated system will assign the Appraisal to an appraiser on the appropriate panel using an algorithmic system designed to limit choice or selection from the discretion of Ameriquest Party employees. This algorithmic system shall be created and maintained by the Appraisal Department and may involve ranking appraisers on the basis of legitimate and relevant factors, including:

- a. The appraiser's familiarity with the geographic locale of the subject property and the type of property to be appraised;
- b. The number of Appraisals the appraiser is capable of performing within a given time period;
- c. The appraiser's record with respect to responsiveness and timeliness;
- d. The status of the appraiser's license; and

- e. Whether, at the time of the Appraisal request, the appraiser has prior Appraisals undergoing pre- or post-funding review or investor due diligence review.

In limited cases (but in no event for purposes of a second or subsequent Appraisal), the Appraisal Department may assign Appraisals to appraisers not selected using the algorithmic system, if the consideration of previously unconsidered legitimate and relevant factors dictates. In that event, the Appraisal Department shall document the reasons for its departure from the normal selection process and maintain the documentation in a readily retrievable format. In no event, however, shall the willingness or unwillingness of an appraiser to produce a desired value become a factor in the selection of an appraiser.

#### 4. **Appraiser Panels.**

- a. ***Service Areas.*** If an appraiser declines an assignment because the appraiser, in his or her professional judgment, believes the property is outside of the appraiser's professional service area, the Appraisal Department shall assign the Appraisal to another appraiser and may not pressure the declining appraiser to accept the assignment. The Ameritrust Parties shall not punish appraisers, including by reducing future assignments, for declining assignments the appraiser believes are outside the appraiser's professional service area.
- b. ***Inclusion on a Panel.*** As a prerequisite to inclusion on a panel, an appraiser must be in good standing with his or her licensing authority.

Only persons who are not Sales Personnel may oversee the selection of appraisers on the panel.

- (1) Before being assigned to a panel, all appraisers who currently or in the past have performed Appraisals on behalf of an Ameriquest Party, including staff appraisers, must have their work product audited for quality and compliance by the Appraisal Department or by a licensed third party appraiser retained for auditing purposes. The Ameriquest Parties agree to review or have reviewed, for each of these appraisers, the greater of ten (10) Appraisals or fifteen percent (15%) of the total number of Appraisals performed by the appraiser for Refinance Loans submitted for approval during the six months prior to the review. If the total number of Appraisals performed by an appraiser during that period is less than ten (10), then all Appraisals performed by that appraiser during that period shall be reviewed. Whenever possible, Appraisals shall be selected for review from the pool of Appraisals performed by the appraiser on Refinance Loans submitted for approval and previously subject to investor due diligence or pre- or post-funding reviews during the period. To the extent the number of previously reviewed Appraisals is insufficient for this purpose, additional Appraisals shall be selected at random from the remaining previously unreviewed Appraisals in the pool. If the result of this review

indicates further evaluation is necessary, the Appraisal Department (or Third Party Reviewer) shall conduct an additional audit of a random sample of fifteen percent (15%) of Appraisals drawn from those performed by the appraiser for Refinance Loans submitted for approval during the year prior to this review. Any Amerquest Party may use an appraiser who has been placed on a panel by another Amerquest Party. No Amerquest Party may use an appraiser who fails an audit review by any Amerquest Party.

- (2) Appraisers who have been previously disciplined by their licensing authority are not eligible for inclusion on a panel. The foregoing provision shall not apply where the discipline is for reasons not involving dishonesty or appraisal quality. In the unlikely event that a sufficient number of non-disciplined appraisers are not available to serve a particular defined service area, an Amerquest Party may use an appraiser who has been disciplined previously by his or her licensing authority but only if the discipline did not involve allegations of fraud or misrepresentation, the license was not suspended and the last disciplinary action was at least one year prior to the proposed retention date.

5. **Appraiser Independence.** The Amerquest Parties shall comply with the independence standards set forth in the October 28, 2003, Independent Appraisal and Evaluation Functions statement by the Office of the Comptroller of the Currency, Federal Reserve Board of Governors, Federal Deposit Insurance

Corporation, Office of Thrift Supervision and National Credit Union Association, as amended from time to time.

6. **Communication of Expected Value to Appraiser Prohibited.**

- a. There shall be no direct communication between Branch Managers or Mortgage Specialists and appraisers except for communications initiated by the appraiser in response to which the Manager or Specialist shall immediately refer the appraiser to the appropriate persons in the Appraisal Department.
- b. In the case of Refinance Loans, no Ameriquest Party employee may identify on the Appraisal order form or communicate by any other means to any individual appraiser or firm either the Loan amount or any other express or implied statement of the anticipated or desired Appraisal value. However, the Borrower's estimated value of the property may be identified on the Appraisal order form but only if accompanied by a statement it is being provided solely to assist the appraiser in determining the relative complexity of the Appraisal and that it is not a target or expected value.

7. **Appraisal Review.** At the same time the completed Appraisal report is delivered (by whatever means) to the Appraisal Department, the report may be forwarded or otherwise made available to the applicable Branch Manager.

- a. If, for the initial Appraisal only, the Branch Manager has a good faith belief that the Appraisal contains an error or is otherwise professionally deficient, the Branch Manager may submit a written or electronically transmitted request to the Appraisal Department explaining the objection



and requesting the appraiser address the specific issue raised. If the Appraisal Department agrees that a good faith basis for the review exists, either on the basis of a request from the Branch Manager or on the basis of a pre-funding review, the Appraisal Department may request in writing or by electronic transmittal the appraiser do one or more of the following:

- (1) Consider additional appropriate information about the property, including additional comparables;
- (2) Provide further detail, substantiation, or explanation for the appraiser's valuation; or
- (3) Correct errors in the Appraisal. The Appraisal Department may not request that an appraiser review an Appraisal solely on the grounds that the valuation is not high enough to qualify the Potential Borrower for the proposed Loan and shall not suggest a specific value.

b. The Amerquest Parties shall document and retain in a readily retrievable format any change in the Appraisal and the reason for the change.

8. **Second Appraisals.** If, after the review process set forth in Paragraph IV.L.7 above has been completed, the Amerquest Party continues to believe the Appraisal is professionally deficient, that Amerquest Party may order a second Appraisal from the next appraiser on the panel. The Amerquest Parties may not order a second Appraisal prior to the completion of this review process; provided, however, that nothing contained herein shall prevent an Amerquest Party from ordering two simultaneous Appraisals where a particular Loan program requires